

ORDER NO. 3347

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Tony Hammond

Competitive Product Prices  
Priority Mail Express Contract 33 (MC2016-87)  
Negotiated Service Agreement

Docket No. CP2016-112

ORDER APPROVING AMENDMENT TO  
PRIORITY MAIL EXPRESS NEGOTIATED SERVICE AGREEMENT

(Issued June 3, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> Notice of United States Postal Service of Amendment to Priority Mail Express Contract 33, with Portions Filed Under Seal, May 20, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 3136, the Commission approved the Priority Mail Express Contract 33 negotiated service agreement (Existing Agreement).<sup>2</sup> On May 20, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. See Notice. On May 23, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

The Postal Service intends for the Amendment to become effective two business days following the day that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. See *id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.* Attachment B at 1.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No other person submitted comments. The Public Representative states that she has reviewed the Amendment, the Existing Agreement, and original and amended financial analyses filed under seal. PR Comments at 2. Based on that review, she states that the amended contract terms do not prohibit the contract as a whole from meeting the requirements of 39 U.S.C. § 3633(a). *Id.* She concludes that the Existing Agreement, as amended, should generate sufficient revenue to cover attributable costs and thereby satisfy 39 U.S.C. § 3633(a). *Id.*

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<sup>2</sup> See Docket Nos. MC2016-87 and CP2016-112, Order Adding Priority Mail Express Contract 33 to the Competitive Product List, March 8, 2016 (Order No. 3136). The Existing Agreement was included as Attachment B to Request of the United States Postal Service to Add Priority Mail Express Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 26, 2016 (Request).

<sup>3</sup> Order No. 3311, Notice and Order Concerning Amendment to a Priority Mail Express Negotiated Service Agreement, May 23, 2016.

<sup>4</sup> Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express Negotiated Service Agreement, June 1, 2016 (PR Comments).

### III. COMMISSION ANALYSIS

The Amendment amends the terms of section I.B. and replaces Table C, Table D, and Table E of the Existing Agreement. See Notice, Attachment A at 1-6. The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.H. of the amended agreement should allow the amended agreement's revenue to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

*Other considerations.* The Postal Service states that the Amendment shall become effective two business days following the day that the Commission completes

its review. Notice at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.<sup>5</sup>

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Express Contract 33 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble  
Secretary

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<sup>5</sup> Request, Attachment B at 5. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.